

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE LAUREN ESPOSITO**

**LEWIS FOODS OF 42ND STREET, LLC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS,
et al.**

and

**FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC, et al.**

**Cases 02-CA-093893, et al.
04-CA-125567, et al.
13-CA-106490, et al.
20-CA-132103, et al.
25-CA-114819, et al.
31-CA-127447, et al.**

GENERAL COUNSEL'S MOTION TO AMEND COMPLAINTS

The General Counsel, by the undersigned, moves to amend the consolidated complaints issued on December 19, 2014, by the Regional Directors of Regions 2, 31, and 13, as follows.

Region 2 Complaint

The General Counsel, at the request of Respondent Franchisee Lewis Foods of 42nd Street, LLC, and with the agreement of Respondent McDonald's USA, LLC, moves to amend the caption and case name for the consolidated complaint issued on December 19, 2014 by Region 2 Director Karen P. Fernbach. The caption for Case Numbers 02-CA-093893 and 02-CA-098662 should read "McDONALD'S USA, LLC, AND LEWIS FOODS OF 42ND STREET, LLC, A McDONALD'S FRANCHISEE, JOINT EMPLOYERS."

Additionally, the General Counsel alone moves to amend the Region 2 complaint as follows:

- Paragraph 1(h) should be amended to read that the "Date Filed" for the First Amended Charge in Case No. 02-CA-097305 was February 19, 2013 (rather than

February 20, 2013).

- Paragraph 1(j) should be amended to read that the “Date Filed” for the First Amended Charge in Case No. 02-CA-097827 was February 15, 2013 (rather than February 20, 2013).
- Paragraph 1(k) should be amended to read that the “Date Filed” for the Second Amended Charge in Case No. 02-CA-097827 was April 29, 2013 (rather than April 30, 2013).
- Paragraph 1(m) should be amended to read that the “Date Filed” for the First Amended Charge in Case No. 02-CA-098009 was February 19, 2013 (rather than February 20, 2013).

Region 31 Complaint

The General Counsel moves to amend the consolidated complaint issued on December 19, 2014, by Acting Region 31 Director Brian D. Gee, as follows:

- Paragraph 1 should be amended to read that the “Date Filed” for the charge in Case No. 31-CA-130085 was June 5, 2014 (rather than June 3, 2014).
- Paragraph 1 should also be amended to read that the “Date Served on Sanders” for Case No. 31-CA-129027 was May 21, 2014 (rather than May 20, 2014).

Region 13 Complaint

The General Counsel moves to amend the consolidated complaint issued on December 19, 2014, by Region 13 Director Peter Sung Ohr, to add two new parties, identify their relationship to existing parties, and to correct inadvertent mistakes in the original complaint.

First, the complaint should be amended to allege (1) that Seven McD, the admitted franchisee at the McDonald’s restaurant at 29 East 87th Street, Chicago, IL, is a joint or single

employer with Taylor & Malone Management of the employees working at the 29 East 87th Street McDonald's restaurant, and that the combined/integrated enterprise and McDonald's USA, LLC are joint employers of the employees working at the 29 East 87th Street McDonald's restaurant; and (2) that Mashayo, Inc., the admitted franchisee at the McDonald's restaurant at 5200 S. Lake Park Avenue, Chicago, IL, is a joint or single employer with Topaz Management of the employees working at the 5200 S. Lake Park Avenue McDonald's restaurant and that the combined/integrated enterprise and McDonald's USA, LLC are joint employers of the employees working at the 5200 S. Lake Park Avenue McDonald's restaurant. Specific amendments reflecting these allegations are described below.

Second, the complaint should be amended to correct inadvertent mistakes in the following paragraphs, as described below: ¶¶ 1, 11, 41, 49, 51, 81, 85, 96, 100, 120, 121, 122, 123, 124, and 125. Where additions have been made, those are indicated in bold typeface.

To begin, the caption should be amended as follows:

- The caption for Case 13-CA-129709 should read “TAYLOR & MALONE MANAGEMENT, **A MANAGEMENT COMPANY FOR AND JOINT/SINGLE EMPLOYER WITH SEVEN McD**, A McDONALD'S FRANCHISEE, and McDONALD'S USA, LLC, JOINT EMPLOYERS”;
- The caption for Case 13-CA-131145 should read “TOPAZ MANAGEMENT, INC., **A MANAGEMENT COMPANY FOR AND JOINT/SINGLE EMPLOYER WITH MASHAYO, INC.**, A McDONALD'S FRANCHISEE, and McDONALD'S USA, LLC, JOINT EMPLOYERS”;

The following paragraphs should be amended to substitute “5200” for all instances of “5220”: 1(uu), 121, 122, 123, 124, and 125.

Subparagraph 11.e. should be amended to include discriminatee Sonia Acuña, as follows:

11. e. Respondent McDonald's at 201 N. Clark St., Chicago engaged in the conduct described above in subparagraphs (a)-(d) because Victor Guzman **and Sonia Acuña** assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Paragraph 41 should be amended to allege that Section 8(a)(3) of Act was violated by the conduct described in paragraphs 39 and 40, as follows:

41. a. By the conduct described above in paragraphs 39 and 40, Respondents McDonald's and McDonald's at 600 N. Clark St., Chicago, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

b. By the conduct described above in paragraph 39 and 40, Respondents McDonald's and McDonald's at 600 N. Clark St., Chicago, as joint employers, have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

Paragraph 49 should be amended to add Erica Perez as having engaged in protected concerted activities, as follows:

49. About December 5, 2013, Respondent McDonald's at 2707 N. Milwaukee Ave., Chicago employees, including Maria Villeda **and Erica Perez**, engaged in concerted activities with other employees for the purposes of bringing complaints

to the attention of Respondent McDonald's at 2707 N. Milwaukee Ave., Chicago and other mutual aid and protection, by demanding a wage increase.

Subparagraphs 51.a. and 51.c. should be amended to add Erica Perez as having been subjected to a reduction in hours on December 5, 2013, as follows:

51. a. About December 5, 2013, Respondent McDonald's at 2707 N. Milwaukee Ave., Chicago **reduced the working hours of employees Maria Villeda and Erica Perez.**

...

c. Respondent engaged in the conduct described above in subparagraphs (a) and (b) because **employees Maria Villeda and Erica Perez** engaged in the conduct described above in paragraph 49 and to discourage employees from engaging in these or other concerted activities.

Paragraph 81 should be amended to allege that Section 8(a)(3) of Act was violated by the conduct described in paragraphs 75, 76, 77, 78, and 79, as follows:

81. a. By the conduct described above in paragraphs 75, 76, 77, 78, and 79, Respondents McDonald's at 70 E. Garfield Blvd., Chicago and McDonald's, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

b. By the conduct described above in paragraphs 75, 76, 77, 78, and 79, Respondents McDonald's at 70 E. Garfield Blvd., Chicago and McDonald's, as joint employers, have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees,

thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

Subparagraph 85.b. should be amended to reflect the Employer's correct address, *i.e.*, occurrences of "9221" should be replaced by "9211."

Paragraph 96 should be amended to reflect the addition of Respondent Seven McD, Inc., by replacing the existing paragraph with the following:

96. a. i. At all material times, Respondent Taylor & Malone Management and Respondent Seven McD, Inc. have been affiliated business enterprises with common officers, directors, owners, management and supervision; have formulated and administered a centralized common labor policy; have interrelated operations; and have held themselves out to the public as a single integrated enterprise.

ii. Based on their operations described above in subparagraph (i) Respondent Taylor & Malone Management and Respondent Seven McD, Inc. constitute a single integrated business enterprise and a single employer within the meaning of the Act (collectively, "Respondent McDonald's at 29 E. 87th St., Chicago").

iii. Alternatively, at all material times, Respondent Taylor & Malone Management and Respondent Seven McD, Inc. have been parties to a contract regarding the operation of the McDonald's quick-service restaurant located at 29 E. 87th St., Chicago, IL.

iv. At all material times, Respondent Taylor & Malone Management has possessed and/or exercised control over the labor relations policies of Respondent Seven McD, Inc.

v. Based on their operations described above in subparagraphs (iii) and (iv), at all material times, Respondent Taylor & Malone Management and Respondent Seven McD, Inc. (collectively, “Respondent McDonald's at 29 E. 87th St., Chicago”) have been joint employers engaged in the operation of a quick-service McDonald's restaurant.

b. i. At all material times, Respondent Taylor & Malone Management has been a corporation, with an office and place of business at 29 E. 87th St., Chicago, Illinois.

ii. At all material times, Respondent Seven McD, Inc. has been a corporation, with an office and place of business at 29 E. 87th St., Chicago, Illinois.

c. Annually, Respondent McDonald's at 29 E. 87th St., Chicago, in conducting its business operations described above in paragraphs 96.a and 96.b.

i. derives gross revenues valued in excess of \$500,000 and

ii. purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of Illinois.

d. At all material times, Respondent McDonald's at 29 E. 87th St., Chicago has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Paragraph 100 should be amended to allege that the excerpted rule also appeared on the

Employee Action Forms, as follows:

100. Since about January 2014, Respondent McDonald's at 29 E. 87th St. Chicago, by its employee schedules, **and on its Employee Action Forms**, promulgated and maintained the following rule:

© McDonald's Corporation. The material contained herein is the confidential property of McDonald's Corporation. Any use, copying or reproduction of this material, without the prior written permission of an Officer of McDonald's is prohibited and may lead to civil and criminal prosecution.

Paragraph 120 should be amended to reflect the addition of Respondent Mashayo, Inc., by replacing the existing paragraph with the following:

120. a. i. At all material times, Respondent Topaz Management, Inc. and Respondent Mashayo, Inc. have been affiliated business enterprises with common officers, directors, owners, management and supervision; have formulated and administered a centralized common labor policy; have interrelated operations; and have held themselves out to the public as a single integrated enterprise.

ii. Based on their operations described above in subparagraph (i) Respondent Topaz Management, Inc. and Respondent Mashayo, Inc. constitute a single integrated business enterprise and a single employer within the meaning of the Act (collectively, "Respondent McDonald's at 5200 S. Lake Park Ave., Chicago").

iii. Alternatively, at all material times, Respondent Topaz Management, Inc. and Respondent Mashayo, Inc. have been parties to a contract regarding the operation of the McDonald's quick-service restaurant located at 5200 S. Lake Park Ave., Chicago, IL.

iv. At all material times, Respondent Topaz Management, Inc. has possessed and/or exercised control over the labor relations policies of Respondent Mashayo, Inc.

v. Based on their operations described above in subparagraphs (iii) and (iv), at all material times, Respondent Topaz Management, Inc. and Respondent Mashayo, Inc. (collectively, “Respondent McDonald's at 5200 S. Lake Park Ave., Chicago”) have been joint employers engaged in the operation of a quick-service McDonald's restaurant.

b. i. At all material times, Respondent Topaz Management, Inc. has been a corporation, with an office and place of business at 5200 S. Lake Park Ave., Chicago, Illinois.

ii. At all material times, Respondent Mashayo, Inc. has been a corporation, with an office and place of business at 5200 S. Lake Park Ave., Chicago, Illinois.

c. Annually, Respondent McDonald's at 5200 S. Lake Park Ave., Chicago, in conducting its business operations described above in paragraphs 120.a and 120.b.

i. derives gross revenues valued in excess of \$500,000 and

ii. purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of Illinois.

d. At all material times, Respondent McDonald's at 5200 S. Lake Park Ave., Chicago has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Dated: New York, New York
May 15, 2015

/s/ Alejandro Ortiz
Alejandro Ortiz
Counsel for the General Counsel

GENERAL COUNSEL'S MOTION TO AMEND COMPLAINTS

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on May 15, 2015 I electronically filed the above-entitled document(s) with the National Labor Relations Board and served the above-entitled document(s) upon counsel for the parties by electronic mail at the following addresses:

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Dated: New York, New York
May 15, 2015

/s/ Jamie Rucker
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